

B' withdrawing the guide wire from the plug so as to leave the plug sealed in blocking relation with said puncture.--.

REMARKS

By this Preliminary Amendment, Applicants have revised the specification to correct a number of minor grammatical and typographical points in the same manner as was done in the parent case. In addition, the art of record from that parent case has been made of record herewith.

Applicants have copied claims that correspond either identically or substantially to certain claims of U.S. Patent No. 5,292,332 to Lee.

Applicants also seek to make various conforming drawing changes to the Figures by way of the accompanying Request for Approval to Make Drawing Changes, duplicate copies of which are enclosed.

Claims 95-104 are now pending in this application. Claims 95 and 102-104 are independent.

REQUEST FOR DECLARATION OF INTERFERENCE

Applicants respectfully request that an interference be declared between the above-captioned patent application and U.S. Patent No. 5,292,332 to Lee, on grounds

that Applicants have invented the subject matter claimed in Lee.

Under the provisions of 37 C.F.R. § 1.606, the interference should initially be instituted with claim 95 of this application as Count I, and claim 37 of the Lee patent as Count II, subject to appropriate motions under 37 C.F.R. § 1.633.

Correspondence
of Application
Claims to Lee Claims

Applicants have copied claims that correspond to certain claims of U.S. Patent No. 5,292,332 to Lee (the exact correspondence of such claims is set forth below) within the anniversary date of the Lee patent's issue date, which anniversary is March 8, 1995.

Regarding the independent claims, application claim 104 is identical to Lee claim 37. Application claims 95, 102 and 103 correspond substantially to Lee claims 11, 38 and 1, respectively. Finally, as to the dependent claims, claims 96-101 are identical to claims 12, 13, 16, 17, 18 and 20 of Lee, respectively.

Thus, the numerical correspondence of application claims 95-104 to the claims of Lee is:

Appln. / Lee

95 - 11
96 - 12
97 - 13
98 - 16
99 - 17

Appln. / Lee

100 - 18
101 - 20
102 - 38
103 - 1
104 - 37

Correspondence of Lee
Claims to the Counts

As prescribed by 37 C.F.R. § 1.607(a), Applicants respectfully submit that claims 11-13, 16-18, 20 and 38 of Lee correspond to Count I, while claims 1 and 37 of Lee correspond to Count II. The precise correspondence of these claims to the counts is as follows.

Claim 37 of Lee is identical to count II. *claim 37*

Claim 11 Claim 11 of Lee corresponds substantially to count I, and differs only in that the language "a portion of said plug means engaging a wall of said artery when disposed in said blocking relation" found in Lee at col. 9, lines 42-43, is not present in the count.

Claim 38 of Lee corresponds substantially to count I, and differs only in that the count speaks of "separable plug means", "movable guide means" and "means for ejecting", whereas claim 38 recites "a separable plug member", "a movable guide element" and "an ejecting mechanism". In addition, the count does not present the claim language "a portion of said plug member engaging a wall of said artery when disposed in said blocking relation" at col. 12, lines 8-10.

Claim 1 of Lee corresponds substantially to count II, and differs in that the preamble language "made for the . . . artery, the method" at col. 8, lines 36-42, of Lee is not included in the count. The count omits the steps in claim 1 of "withdrawing the cardiac catheter from the guide

tube," (col. 8, lines 43-44) and "moving the guide tube outwardly so that it no longer extends within the puncture and leaves the guide wire extending through the puncture" (col. 8, lines 49-51). Finally, the step in Lee claim 1 of "extending a plug having a removable guide wire extending longitudinally therethrough into said guide tube" (col. 8, lines 45-47) has been changed in count II to "threading a plug over said guide wire".

Finally, as to the dependent claims, claims 12, 13, 16, 17, 18 and 20 of Lee correspond to the same counts as their respective base claims.

Correspondence of
Application Claims
to the Counts

Of the claims now pending in this application, claims 95-102 correspond to Count I, and claims 103 and 104 correspond to Count II. Claim 95 is identical to proposed count I, and claim 104 is identical to count II. Claim 102 corresponds substantially to count I, and claim 103 corresponds substantially to count II (the precise differences between the substantially corresponding application claims and the counts are discussed in detail below). Finally, as to the dependent claims, claims 96-101 correspond to the same counts as their respective base claims.

Claim 102 differs from count I in that the count speaks of "separable plug means", "movable guide means" and

"means for ejecting", whereas claim 102 provides for "a separable plug member", "a movable guide element" and "an ejecting mechanism".

Claim 103 differs from count II in that the preamble text "made for the . . . artery, the method" at lines 2-7 of claim 103 is not included in the count. In addition, the count omits the steps in claim 1 of "withdrawing the cardiac catheter from the guide tube," (lines 9-10) and "moving the guide tube outwardly so that it no longer extends within the puncture and leaves the guide wire extending through the puncture" (lines 14-16). Finally, claim 103 differs from the count in that the passage "extending a plug having a removable guide wire extending longitudinally therethrough" (lines 11-12) is set forth in count II as "threading a plug over said guide wire".

Support for the
Newly-Presented Claims

The Examiner will appreciate, by reference to the attached claim chart (Tab A), that each and every element of claims 95-104 finds support in the original disclosure of the instant application.

The instant application is a Rule 60 continuation application of U.S. Patent Application S.N. 08/318,380, filed on October 5, 1994, which in turn is a Rule 60 divisional of U.S. Patent Appln. S.N. 07/746,339, filed on August 16, 1991, and now U.S. Patent No. 5,391,183, which in turn was a

continuation-in-part of U.S. Patent Appln. S.N. 07/634,478, filed on December 27, 1990, and now abandoned. Each of these applications is entitled to and claims the priority benefits under 35 U.S.C. § 119 of European Patent Application No. 90 118 186.7, filed on September 21, 1990^{*/}. The disclosure of the parent applications (save for the '478 application and the EP '186.7 priority document) being identical to that of the subject application, and all of these applications providing support for the claimed invention, the Examiner will readily appreciate that the claims of the instant application are entitled to the benefit of the filing dates of all the parent applications, U.S. and foreign.

A comparison of the claims of this application to the claims of Lee indicates that claims 11 and 38 of Lee and claims 95 and 102 of this application are directed to a device for closing a puncture wound in a wall of an artery. Likewise, that comparison establishes that claims 1 and 37 of Lee and claims 103 and 104 of this application are directed to a method of closing a puncture wound in the wall of an artery. As a convenience, such a comparison of claims is included at Tab B.

As the Examiner will note, the filing date of the Lee patent is July 27, 1992. Applicants' earliest effective filing date is some 22 months earlier, September 21, 1990.

^{*/} In accordance with 37 C.F.R. § 1.55(a), a certified copy of the English language priority document already has been filed in parent application S.N. 07/746,339.

Therefore, Applicants should be made senior party in this interference.

Applicants' pending application discloses and claims a device for sealing puncture wounds in blood vessels. In addition, the application claims a method for sealing puncture wounds in blood vessels. The '332 patent, with a much later effective filing date, claims Applicants' device and method.

It is thus clear that the '332 patent, which is 22 months junior to Applicants' filing date, is impermissibly claiming Applicants' prior invention.

CONCLUSION

Applicants respectfully submit that this application presents claims drawn to subject matter which interferes with the subject matter claimed in U.S. Patent No. 5,292,332 to Lee. Applicants respectfully submit that they have fully-complied with all of the provisions of 37 C.F.R. § 1.607, and so have established that an interference should be declared between the subject matter of this application and Lee. Accordingly, favorable consideration and declaration of an interference are respectfully requested.

Applicants' undersigned attorney may be reached by telephone in our New York office at (212) 758-2400. All

correspondence should continue to be directed to our below
listed address.

Respectfully submitted,

A handwritten signature in dark ink, reading "David L. Schaeffer". The signature is written in a cursive style with a large, prominent "D" and "S".

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